

Before the
Federal Communications Commission
Washington, D.C. 20554

MAILED

JUN 18 2007

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In the Matter of

Amendment of Section 73.202(b),)	
Table of Allotments,)	MB Docket No. 05-112
FM Broadcast Stations.)	RM-11185
(Fredericksburg, Converse, Flatonia,)	RM-11374
Georgetown, Ingram, Lake way, Lagos Vista,)	
Llano, McQueen, Nolensville, San Antonio,)	
and Waco, Texas))	

Amendment of Section 73.202(b),)	MB Docket No. 05-151
Table of Allotments,)	RM-11222
FM Broadcast Stations.)	RM-11258
(Llano, Junction and Goldthwaite, Texas))	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 13, 2007

Released: June 15, 2007

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it the *Notice of Proposed Rule Making* in MB Docket No. 05-112¹ and the *Notice of Proposed Rule Making* in MB Docket No. 05-151.² The *Llano NPRM* proposed the allotment of Channel 297A to Llano, Texas. In response to *Llano NPRM*, Mantilla Broadcasting Properties, Ltd. ("Mantilla") filed a Counterproposal proposing the allotment of Channel 297A to Goldthwaite, Texas.³ The *Fredericksburg NPRM* proposed the allotment of Channel 256C3 to Fredericksburg, Texas. In response to *Fredericksburg NPRM*, Rawhide Radio, LLC, Clear Channel Broadcasting Licenses, Inc., CCB Texas Licenses, LP, and Capstan TX Limited Partnership ("Joint Parties") filed a Counterproposal involving eleven communities in Texas.⁴ Included among these proposals was the substitution of Channel 297A for Channel 242A at Llano, Texas. This conflicts with

¹ *Fredericksburg, Texas*, Notice of Proposed Rule Making, 20 FCC Rcd 6009 (MB 2005) ("*Fredericksburg NPRM*").

² *Llano and Junction, Texas*, Notice of Proposed Rule Making, 20 FCC Rcd 6318 (MB 2005) ("*Llano NPRM*").

³ In MB Docket No. 05-151, Linda Crawford filed Comments and a Withdrawal of Petition. The Joint Parties filed Comments, a Supplement, a Motion to Accept Supplement, and Reply Comments. In addition to its Counterproposal, Munbilla filed Reply Comments, Further Reply Comments and an Opposition to Motion to Accept Supplement.

⁴ In MB Docket No. 05-112, Katherine Pyeatt filed Comments, an Opposition to Counterproposal, and Withdrawal of Petition. In addition to their Counterproposal, the Joint Parties filed Reply Comments, a Supplement, a Motion to Accept Supplement, and a Motion to Strike Opposition to Counterproposal. Munbilla filed Reply Comments and an Opposition to Motion to Accept Supplement.

each of the Channel 297A proposals in MB Docket No. 05-151. For this reason, we are consolidating these dockets.⁵ As discussed below, we are allotting Channel 297A to Goldthwaite, Texas.

I. BACKGROUND

2. At the request of Katherine Pyeatt, the *Fredericksburg NPRM* proposed the allotment of Channel 256C3 to Fredericksburg, Texas. The Joint Parties Counterproposal proposes the substitution of Channel 247C1 for Channel 248C at Waco, Texas, reallocation of Channel 247C1 to Lakeway, Texas, and modification of the Station KWTX license to specify operation on Channel 247C1 at Lakeway, Texas. In order to accommodate Channel 247C1 at Lakeway, the Joint Parties propose the substitution of Channel 245C1 for Channel 247C at San Antonio, Texas, and modification of the Station KAJA license to specify operation on Channel 245C1 at a new site.⁶ To accommodate both Channel 245C1 at San Antonio and Channel 247C1 at Lakeway, the Joint Parties propose the substitution of Channel 243C2 for Channel 244C1 at Georgetown, Texas, reallocation of Channel 243C2 to Lago Vista, Texas, and modification of the Station KHFI license to specify operation on Channel 243C2 at Lago Vista, Texas. In order to reallocate Channel 243C2 to Lago Vista, the Joint Parties propose the substitution of Channel 256A for Channel 243A at Ingram, Texas. To this end, it would also be necessary to modify the outstanding Station KAKI construction permit to specify operation on Channel 256A.⁷ The Channel 247C1 allotment at Lakeway also requires the substitution of Channel 297A for Channel 242A at Llano, Texas, and modification of the Station KQBT license to specify operation on Channel 297A.⁸ In turn, the channel substitution at Llano requires the Joint Parties to propose the substitution of Channel 249A for Channel 297A at Nolanville, Texas, and modification of the Station KLFX license to specify operation on Channel 249A.⁹ To accommodate Channel 249A at Nolanville, the Joint Parties propose the relocation of the transmitter site for Station KVCQ, Channel 249C1, McQueeney, Texas, and change of its community of license to Converse, Texas. Rawhide Radio, L.L.C., licensee of Station KVCQ has consented to the transmitter relocation and change of community of license. Finally, the Joint Parties recognize that the proposed reallocation to Converse will create a small gray area within the area that would lose service. To serve this area, the Joint Parties propose the allotment of Channel 232A to Flatonia, Texas.

3. At the request of Linda Crawford, the *Llano NPRM* proposed the allotment of Channel 297A to Llano, Texas, as its fourth commercial FM service. To accommodate the allotment at Llano, Crawford requested a change in the reference coordinates for vacant Channel 297A at Junction, Texas. In response to the *Notice*, Munbilla filed a Counterproposal proposing the allotment of Channel 297A to Goldthwaite,

⁵ The proposed allotment of Channel 297A at Llano conflicts with the proposed substitution of Channel 297A for Channel 242A at Llano contained in the Joint Parties Counterproposal in MM Docket No. 00-48. Similarly, the proposed allotment of Channel 256C3 at Fredericksburg conflicts with a proposal to allot Channel 256A to Ingram, Texas, also contained in the Joint Parties Counterproposal in MM Docket No. 00-48. The staff has dismissed this MM Docket No. 00-48 Counterproposal. *Quanah, Texas, et al.*, Report and Order, 18 FCC Rcd 9495 (MB 2003), *aff'd* Memorandum Opinion and Order, 19 FCC Rcd 7159 (MB 2004), *app. for review pending*. An Application for Review was filed on June 21, 2004. Both the *Fredericksburg NPRM* and the *Llano NPRM* cautioned parties that the grant of any proposal would be subject to the outcome of MM Docket No. 00-48, because that proceeding is effective but not final. See *Auburn, Alabama, et al.*, Memorandum Opinion and Order, 18 FCC Rcd 10333 (MB 2003).

⁶ CCB Texas Licenses, L.P. is the licensee of Station KAJA and Station KHFI, and one of the Joint Parties.

⁷ This construction permit was (File No. BNPH-20050103ACN) also conditioned on the outcome of MM Docket No. 00-148. Radioactive, LLC, permittee of Station KAKI has filed a one-step application to specify operation on Channel 243C3 (File No. BMPH-20050815AEK).

⁸ Rawhide Radio, LLC, is the licensee of Station KQBT and is one of the Joint Parties.

⁹ Clear Channel Broadcasting Licenses, Inc., is the licensee of Station KLFX and is one of the Joint Parties.

Texas, as a first local service.

4. Both *Notices* referred to the separate proceeding in MM Docket No. 00-148 involving a Joint Parties Counterproposal to a proposal to allot Channel 233C2 to Quanah, Texas. In order to provide a background to this consolidated proceeding, it is necessary to set forth certain aspects of MM Docket No. 00-148 and the Joint Parties Counterproposal filed in that proceeding.

5. In response to the *Notice* in MM Docket No. 00-148, the Joint Parties filed a Counterproposal involving twenty-two communities in Texas and Oklahoma. While the Joint Parties Counterproposal in MB Docket No. 05-112 proposes some of the allotments set forth in the Counterproposal filed in MM Docket 00-148, this latter Counterproposal includes certain additional allotments.¹⁰ In MM Docket No. 00-148, the Joint Parties proposed the substitution of Channel 248C for Channel 248C2 at Durant, Oklahoma, reallocation of Channel 248C to Keller, Texas, and the modification of the Station KLAQ license to specify operation on Channel 248C at Keller. In order to accommodate this allotment, the Joint Parties proposed three channel substitutions. Included among those substitutions was the substitution of Channel 230C1 for Channel 248C1 at Archer City, Texas, and the modification Station KRZB construction permit to specify operation on Channel 230C1. The proposed Channel 230C1 allotment at Archer City was short-spaced to an application filed by AM&FM Broadcasters, LLC, licensee of Station KICM, Channel 229C2, Krum, Texas, to upgrade to Channel 229C1 (File No. BMPH-20000725AAZ). For this reason, the *Report and Order* in MM Docket No. 00-148 dismissed the entire Counterproposal. Subsequently, we denied a Petition for Partial Reconsideration. In doing so, we rejected the Joint Parties argument that we should have considered the portion of the Counterproposal which was not defective and issued a separate Notice of Proposed Rule Making *nunc pro tunc* to the time its Counterproposal was originally filed.

II. DISCUSSION

6. We deny the Joint Parties Counterproposal in MB Docket No. 05-112. As stated in the Joint Parties Counterproposal, its Supplement and Munilla's Further Reply Comments, the proposed Channel 297A for Channel 242A substitution at Llano is necessary to accommodate Channel 247C1 at Lakeway. The Joint Parties Counterproposal in this proceeding was filed on the May 9, 2005, comment date in MB Docket No. 05-112. This Channel 297A substitution at Llano is short-spaced to the Station KHLB construction permit at Burnet, Texas (File No. BPH-20030902ADU). That application was filed on September 2, 2003, and granted on June 29, 2004. Both of these dates were prior to the Joint Parties Counterproposal in this proceeding. The construction permit contained the following condition:

The grant of this permit is conditioned on the final outcome of MM Docket No. 00-148. The final outcome of that proceeding may require KHLB to change frequency, class, or site location. Accordingly, any construction undertaken pursuant to this permit is at the permittee's sole risk. See *Meridian Communications*, 2 FCC Rcd 5904 (Rev. Bd. 1987).

Except for proposals being considered in MM Docket No. 00-148, the Station KHLB application is entitled to cut-off protection from the date it was filed from all subsequently filed rulemaking proposals and applications.¹¹ Contrary to the assertions by the Joint Parties, the Counterproposals filed in MB

¹⁰ The Joint Parties Counterproposal in MM Docket No. 00-148 involved the additional communities of Archer City, Keller, Knox City, Seymour and Wellington, Texas, and Ardmore, Durant, Elk City, Healdton, Lawton and Purcell, Oklahoma.

¹¹ See *Conflicts Between Applications and Petitions for Rule Making to Amend the FM Table of Allotments* ("Conflicts"), Report and Order, 7 FCC Rcd 4917 (1992), *recon. denied in rel. part*, Memorandum Opinion and Order, 8 FCC Rcd 4743 (1993); see also 47 C.F.R. § 73.208(a)(1).

Docket No. 05-112 and MM Docket No. 00-148 are not the "same."¹² In MB Docket No. 05-112, the Joint Parties deleted the portion of their earlier Counterproposal which we found to be defective. This recasting of the dismissed Counterproposal in MM Docket No. 00-48 does not revive that dismissed proposal or create cut-off rights in MB Docket No. 05-112 that in some way relate back to the dismissed MM Docket No. 00-48 Counterproposal. Thus, the Joint Parties' failure to fully protect the Station KHLB construction permit, at the time the MB Docket No. 05-112 Counterproposal was filed, is fatal to that Joint Parties' Counterproposal.¹³ The condition on the Station KHLB construction permit relates only to the possibility that the Commission could grant review and reverse the outcome in MM Docket No. 00-148.

7. Both Linda Crawford and Katherine Pyeatt filed a Withdrawal of Petition requesting dismissal of their respective proposals. In accordance with Section 1.420(j) of the rules, both parties filed affidavits stating that no consideration has been paid or promised, directly or indirectly, for these requests for dismissals. As requested, we are dismissing both proposals.

8. We are allotting Channel 297A to Goldthwaite, Texas.¹⁴ This will provide Goldthwaite with its first local service. This allotment conflicts with the proposed substitution of Channel 297A for Channel 242A at Llano, Texas, contained in the Joint Parties Counterproposal in MM Docket No. 00-148. For this reason, the Channel 297A allotment in this proceeding is conditioned on the outcome of MM Docket No. 00-148 and will not be available for auction until final resolution of that proceeding.

III. ORDERING CLAUSES

9. Accordingly, pursuant to the authority contained in Sections 4(i), 5©(1), 303 (g) and (r) and Section 307(b) of the Communications Act of 1934, as amended, and sections 0.61, 0.204(b0 and 0.283 of the Commission's Rules, IT IS ORDERED, That effective July 30, 2007, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

<u>Community</u>	<u>Channel No.</u>
Goldthwaite, Texas	297A

10. IT IS FURTHER ORDERED, That the allotment of Channel 297A to Goldthwaite, Texas, is conditioned on the outcome of MM Docket No. 00-148 and is subject to summary deletion depending upon the action by the Commission in that proceeding.

11. IT IS FURTHER ORDERED, That the aforementioned Petition for Rule Making filed by Linda Crawford for Channel 297A at Llano, Texas, IS HEREBY DISMISSED.

12. IT IS FURTHER ORDERED, That the aforementioned Petition for Rule Making filed by Katherine Pyeatt for Channel 256C3 at Fredericksburg, Texas, IS HEREBY DISMISSED.

13. IT IS FURTHER ORDERED, that the aforementioned Counterproposal jointly filed by Rawhide Radio, LLC, Clear Channel Broadcasting Licenses, Inc., CCB Texas Licenses, LP, and Capstan TX Limited Partnership, IS DENIED.

¹² Joint Parties Counterproposal in Summary and Joint Parties Supplement at 2.

¹³ See *Broken Arrow and Bixby, Oklahoma*, 3 FCC Rcd 6507 (MMB 1988); *Amboy, California*, 19 12405 (MB 2004); *Milford, Utah*, 19 FCC Rcd 10335 (MB 2004).

¹⁴ The reference coordinates for the Channel 297A allotment at Goldthwaite, Texas, are 31-30-00 and 98-42-23.

14. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* U.S.C. § 801(a)(1)(A).

15. A filing window for Channel 297A at Goldthwaite, Texas, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order.

16. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

17. For further information concerning this proceeding, contact Robert Hayne, Media Bureau, (202) 418-2177.

FEDERAL COMMUNICATIONS COMMISSION

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